

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on June 22, 2023

COMMISSIONERS PRESENT:

Rory M. Christian, Chair  
Diane X. Burman  
James S. Alesi  
Tracey A. Edwards  
John B. Howard  
David J. Valesky  
John B. Maggiore

CASE 23-E-0154      Proceeding on Motion of the Commission to Seek  
Consequences against FC Energy Services  
Company LLC for Violations of the Uniform  
Business Practices.

ORDER TO SHOW CAUSE

(Issued and Effective June 26, 2023)

BY THE COMMISSION:

INTRODUCTION

In this Order, the Commission finds that Department of Public Service (Department) Staff has identified sufficiently credible evidence in the record of this case to support the issuance of an Order to Show Cause (OTSC) concerning FC Energy Services Company LLC's (FC Energy) apparent failure to comply with the applicable Uniform Business Practices (UBP), §§2.D.1 and 2.D.2. We now provide FC Energy with an opportunity to respond to Staff's contentions. FC Energy is ordered to show cause within 30 days, why its eligibility to act as an energy services company (ESCO) in New York State should not be revoked or, alternatively, why other consequences as set forth in the

Commission's Uniform Business Practices (UBP) should not be imposed.

Annually, an ESCO must submit, by January 31 of each year, either a statement adopting the prior information and attachments contained in the ESCO's Retail Access Application Form (RAAF) or file corrections to those submissions consistent with the requirements of the UBP Section 2.D.1 (annual compliance filing). On March 1, 2023, the Department issued a Notice of Apparent Violation (NOAV) letter to FC Energy, an ESCO, for apparently failing to file with the Secretary to the Commission its annual compliance filing. According to Staff records, FC Energy subsequently did not respond to the Department's March 1, 2023 NOAV letter.

Further, every three years, starting from the date of the Department's eligibility letter, an ESCO must submit updated application package information consistent with the requirements of the UBP Section 2.D.2 (triennial compliance filing). This information assists Department Staff to timely monitor companies' compliance with the UBP and related orders by the Commission. On April 19, 2023, Department Staff issued an NOAV to FC Energy for apparently failing to file its triennial compliance filing with the Secretary to the Commission. According to Staff records, FC Energy did not respond to the Department's April 19, 2023 NOAV.

This Order directs FC Energy to show cause, within 30 days of the date of this Order, why its eligibility to act as an ESCO in New York State should not be revoked or, alternatively, why other consequences set forth in the Commission's UBP should not be imposed.

### BACKGROUND

In February 2008, Department Staff deemed FC Energy eligible to serve non-residential electric customers in New York State. FC Energy serves electric commodity to large commercial and industrial customers in the Consolidated Edison Company of New York, Inc.'s service territory.

To maintain eligibility status, an ESCO must file its annual compliance filing. UBP §2.D.1 requires each ESCO to submit, by January 31 of each year, a statement that the information and attachments contained in the ESCO's Retail Access Eligibility Form and application package are current. Or, if revisions are necessary, UBP §2.D.1 requires that the ESCO file these revisions by January 31. Once Department Staff has received and reviewed this information, it issues a compliance letter to the ESCO.

In addition, UBP §2.D.2 requires each ESCO to update all the information it submitted in its original application package to the Department every three years, starting from the date of its eligibility letter.

The eligibility requirements of the UBP, contained in Section 2, provides that, in determining an appropriate consequence when an ESCO fails to comply with the UBP, the Department shall first notify the ESCO of such failure(s) and request that the ESCO take corrective action within a prescribed "cure" period (§2.D.6.1.a), which for this provision is ten business days.

### THE DEPARTMENT'S INVESTIGATION AND FINDINGS

#### A. Annual Compliance

Department Staff contacted FC Energy on several occasions to notify FC Energy of the 2023 annual compliance filing and of its apparent failure to submit the required

compliance information. Specifically, Department Staff sent an e-mail to FC Energy on December 30, 2022, to remind it that the filing was due January 31, 2023. Department Staff sent an overdue annual compliance notice to FC Energy's regulatory contact via email on February 3, 2023, granting an extension to complete the filing by February 7, 2023. Department Staff received an additional extension request from FC Energy's regulatory contact, Michelle Piasecki, Esq., via email on February 7, 2023. Department Staff granted the second extension with a due date of February 10, 2023. FC Energy apparently failed to file its annual compliance.

On March 1, 2023, Department Staff sent an NOAV letter via email to FC Energy and instructed FC Energy to file its required annual compliance filing by March 15, 2023.<sup>1</sup> On March 8, 2023, Department Staff sent the NOAV letter via certified mail to the address on record for FC Energy. The NOAV letter made clear that, if the Department did not receive the filing by March 15, 2023, Department Staff would seek from the Commission an Order to Show Cause to find FC Energy in violation of UBP §2.D and to seek further remedies, including the possible revocation of FC Energy's eligibility to operate as an ESCO in the State of New York. FC Energy apparently failed to respond to the Department's March 1, 2023 NOAV letter.

#### B. Triennial Compliance

Department Staff contacted FC Energy on several occasions to notify FC Energy of the triennial compliance filing and of its apparent failure to submit the required triennial compliance information. Specifically, Department Staff sent an e-mail to FC Energy on January 6, 2023, to remind it that the

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<sup>1</sup> See March 1, 2023 NOAV Letter to FC Energy filed under matter number 23-00350.

filing was due February 5, 2023. Department Staff sent an overdue triennial compliance notice to FC Energy's regulatory contact, Michelle Piasecki, via email on February 15, 2023, March 3, 2023, and March 29, 2023. FC Energy's regulatory contact responded on April 5, 2023, and represented that the issue was still in the process of being resolved due to corporate restructuring. FC Energy apparently failed to file the triennial compliance filing.

On April 19, 2023, Department Staff sent an NOAV letter via email to FC Energy and instructed FC Energy to file its required triennial compliance filing by May 3, 2023.<sup>2</sup> On April 19, 2023, Department Staff sent the NOAV letter via certified mail to the address on record for FC Energy. The NOAV letter made clear that, if the Department did not receive the filing by May 3, 2023, Staff would seek from the Commission an Order to Show Cause to find FC Energy in violation of UBP §2.D and to seek further remedies, including the possible revocation of FC Energy's eligibility to operate as an ESCO in the State of New York. On May 3, 2023, FC Energy's regulatory contact requested an extension to file to May 5, 2023. FC Energy apparently failed to respond to the Department's April 19, 2023 NOAV letter.<sup>3</sup>

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<sup>2</sup> See April 19, 2023 NOAV Letter to FC Energy filed under matter number 23-00350.

<sup>3</sup> FC Energy has apparently failed to submit its annual compliance on time in the past. In July 2015, Department Staff issued FC Energy an NOAV letter for failure to file revised sales agreements as part of their annual compliance filing. As a response to the NOAV letter, FC Energy filed its revised contracts on October 30, 2015, which apparently was several months after the submission deadline.

LEGAL AUTHORITY

The Commission has "the authority to condition ESCOs' eligibility to access utility [distribution systems] on such terms and conditions that the [Commission] determines to be just and reasonable."<sup>4</sup> The Commission's UBP was adopted pursuant to this authority and set forth various regulatory eligibility requirements for ESCOs to begin accessing, and to continue accessing, utility distribution systems for the purpose of selling energy services to customers. The Commission has authority to enforce those terms and conditions by imposing consequences on ESCOs that fail to abide by them.

DISCUSSION AND CONCLUSION

Every ESCO in New York must comply with the UBP and all applicable orders from this Commission to maintain its eligibility to operate in New York. The Commission notes that that the presentation of Staff's allegations herein does not reflect a final determination of facts or legal conclusions. However, at this stage of the proceeding, the Commission finds that the Department's investigation has identified sufficient credible information to support Staff's contention that FC Energy apparently violated UBP §§2.D.1 [annual compliance] and 2.D.2 [triennial compliance].

As previously noted, this Order is based on information obtained and presented by Staff. The company may avail itself of the opportunity to respond to the allegations set forth in this Order - including whether or not the company timely filed the referenced compliance filings. Based on Staff's initial presentation here at this stage, the Commission,

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<sup>4</sup> Matter of National Energy Marketers Assn. v. New York State Pub. Serv. Commn., 33 N.Y.3d 336, 350-51, rearg. denied, 33 N.Y.3d 1130 (2019); see Public Service Law §§5(1)(b), 65(1), 66(5), 66-d(2); see generally GBL §349-d(11).

therefore, orders FC Energy to show cause why, based upon the allegations and contentions described herein, its eligibility to provide services as an ESCO in New York should not be revoked. FC Energy should further show why other consequences should not be imposed.

The Commission orders:

1. A proceeding is instituted, and FC Energy is ordered to show cause within 30 days of the date of this Order why the Commission should not revoke its eligibility to operate as an Energy Services Company in the State of New York, or impose other consequences, as described in UBP §2.D.6.

2. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

3. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary